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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT J. MICKLES,

Defendant and Appellant.

A154863

(San Francisco County
Super. Ct. No. SCN 225413,
14031191)

Robert J. Mickles contends insufficient evidence supports his first degree robbery conviction (Pen. Code, § 211),¹ and that the conviction was influenced by the prosecution witnesses' inflammatory testimony.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The prosecution charged Mickles with several crimes arising out of a December 2014 incident, including first degree robbery (§ 211, count 5) and attempted first degree robbery (§§ 664, 211, count 6).

Prosecution Evidence

In December 2014, Philip Helmer, a police officer, lived on the ground floor of an apartment building in San Francisco. Helmer's apartment was at the end of a dimly lit hallway off of the lobby. At 6:10 a.m. on December 3, 2014, Helmer was leaving his

¹ Statutory references are to the Penal Code.

apartment to go to work. He was wearing jeans and a t-shirt. He had a loaded pistol in a holster on his right hip. Helmer was carrying a backpack, keys, and a cell phone.

As Helmer locked his front door, he heard a voice say, “ ‘Give me your stuff.’ ” “[S]urprised and startled,” Helmer saw a “figure in the hallway,” about six feet away. “It looked like a shadow. It was so dark [Helmer] couldn’t tell if it was a man or a woman.”² When Helmer heard the person say “ ‘Give me your stuff’ ” a second time, Helmer felt afraid because he thought he “was being robbed.” Helmer dropped what he was carrying, “drew [his] pistol,” and said, “ ‘Police, stop, back up or I’ll shoot.’ ” At that point, Helmer determined the person was a man wearing a blanket. The man—later identified as Mickles—showed Helmer his hands, but he approached Helmer and said, “ ‘Shoot me, shoot me.’ ”

The hallway was dark. As Mickles came “towards” him, Helmer thought, “I’m about to get shot or stabbed.” Helmer holstered his pistol because he could not determine if Mickles was armed. Mickles “engaged [Helmer]” and the two men “clenched” and “started to wrestle, grapple.” Helmer moved Mickles down the hallway, toward the lobby. As the men wrestled, Helmer felt “in control.” He told Mickles to “ ‘Stop fighting’ ” and he pinned Mickles. At that point, Helmer saw an opportunity to get his cell phone out of his pocket.

As Helmer reached to get his phone, Mickles’s “left arm came around [Helmer’s] body.” Helmer “felt it pull towards [his] hip and [his] pistol.” Helmer thought Mickles was “going for [the] gun,” so he checked his holster to see if the gun was “still there.” It was not. Helmer felt “[d]read.” He was worried he was going “to get killed with [his] own gun.” Helmer reached under Mickles’s body and felt Mickles’s hands on the gun.

² Helmer testified he thought, “I’m getting robbed and being a police officer and from my training, knowledge and past experience, robberies are usually committed with weapons.” The court sustained defense counsel’s objection to the testimony. Later, Helmer testified he drew his weapon because “I was being robbed and I feared for my safety. And from my prior experience as a police officer . . . robbery’s a felony, it’s a violent crime” The court sustained defense counsel’s objection, struck the testimony, and instructed the jury not to consider it.

The two men struggled over the gun. Mickles tried to turn the gun towards Helmer, while Helmer tried to point the muzzle towards Mickles. Helmer said, “ ‘Let go of the gun. Give up the gun. Let go of the gun.’ ” Mickles did not comply. The men “struggle[ed] over the gun” and Helmer unsuccessfully “tried to take it away from [Mickles].” Mickles’s hands were around the gun when it discharged.

Helmer saw blood and realized Mickles had been shot. Helmer told Mickles he would call an ambulance; he asked Mickles for the gun. Mickles said, “No. No. No. No.” At some point, Helmer felt Mickles’s grip on the gun “slipping” and Helmer “ripped the gun” from Mickles’s hand and stood. Mickles started to stand, but Helmer pushed him to the ground and called 911. Mickles stood up a second time “and started coming toward” Helmer. Helmer holstered the gun, threw Mickles on his back, and mounted him. Mickles “continued to fight,” clawing at Helmer’s face, scratching him, and reaching for the gun. Mickles bit Helmer on the chest and arm. Helmer punched Mickles in the face to subdue him; shortly thereafter, the police arrived and arrested Mickles. Mickles’s DNA was found on Helmer’s gun.

Defense Evidence and Prosecution Rebuttal

The defense presented evidence regarding Mickles’s childhood trauma, his extensive drug use, and his prior contact with law enforcement. In 2014, Mickles was hospitalized for “a mental health detention.” A defense expert testified Mickles suffered from post-traumatic stress disorder, “[u]nspecified schizophrenia spectrum[,] and other psychotic disorders,” and described the symptoms. The expert opined Mickles was in an acute psychotic state on the morning of the incident and was not conscious of his actions. Mickles told the expert he did not remember the incident.

The prosecution’s rebuttal expert testified Mickles suffered from “substance-induced psychotic disorder and other unspecified psychotic disorder.” The expert also testified Mickles was likely suffering from symptoms of psychosis on the morning of the incident, but that his behavior was consistent with a person who was conscious of his behavior. According to the expert, Mickles’s behavior was “goal-directed.”

Closing Argument, Verdict, and Sentence

The prosecution urged the jury to convict Mickles of the charges, including count 5, robbery of Helmer's firearm, and count 6, the attempted robbery in the hallway when Mickles said, " 'Give me your stuff.' " Defense counsel argued Mickles was "not guilty . . . because he was not conscious of his actions" during the incident. Regarding counts 5 and 6, counsel argued Mickles did not enter Helmer's apartment building with the intent to commit theft, and that there was "no corroboration for [Helmer's] story."

The jury convicted Mickles of two counts of second degree robbery (§ 211, counts 1 and 2); assault with force likely to produce great bodily injury (§ 245, subd. (a)(4), count 3); and misdemeanor battery (§ 242, count 10). The jury convicted Mickles of first degree robbery (§ 211, count 5). On count 6, the jury found Mickles guilty of the lesser included offense of attempted theft (§§ 664, 484). The court sentenced Mickles to six years in state prison and six months in county jail.

DISCUSSION

Mickles argues insufficient evidence supports count 5, the first degree robbery conviction. "When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] . . . We presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding." (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.)

Robbery is "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." (§ 211.) The elements of robbery are (1) the defendant took property that was not his; (2) the property was taken from another person's possession and immediate

presence; (3) the property was taken against the person's will; (4) the defendant used force or fear to take the property or to prevent the person from resisting; and (5) when the defendant used force or fear to take the property, the defendant intended to remove it from the owner's possession for such an extended period of time the owner would be deprived of a major portion of the value of the property. (*People v. Clark* (2011) 52 Cal.4th 856, 943.) "The crime of robbery is a continuing offense that begins from the time of the original taking until the robber reaches a place of relative safety." (*People v. Estes* (1983) 147 Cal.App.3d 23, 28; *People v. McKinnon* (2011) 52 Cal.4th 610, 686–687.)

Mickles contends he did not " 'take' " Helmer's gun. "The 'taking' aspect of robbery consists of two parts—'gaining possession of the victim's property and asporting or carrying away the loot.' " (*In re Aaron J.* (2018) 22 Cal.App.5th 1038, 1058.) The taking element is satisfied by "any slight movement of the loot." (*People v. Haynes* (1998) 61 Cal.App.4th 1282, 1290.) To support his argument that insufficient evidence supports the taking element, Mickles recites evidence suggesting the gun accidentally fell out of Helmer's holster and that Mickles "rolled" on top of it. Mickles misunderstands the standard of review. Under the substantial evidence standard, the question is " 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (*People v. Castaneda* (2011) 51 Cal.4th 1292, 1322, abrogated on other grounds in *People v. Hardy* (2018) 5 Cal.5th 56.)

The answer here is yes. Helmer testified that as he and Mickles were wrestling, he felt Mickles's arm reach around his body, followed by a "pull" towards the pistol. When Helmer checked his holster, the gun was missing. Then Helmer reached under Mickles's body and felt Mickles's hands on the gun. The two men struggled over the gun, with Mickles refusing Helmer's command to " '[l]et go' " of it. Mickles's hands were around the gun when it discharged, and Helmer had to rip the gun from Mickles's hand to regain possession of it. From this evidence, the jury reasonably could conclude Mickles "exercise[d] dominion and control" over Helmer's gun, and that Mickles moved the gun.

(*In re Aaron J.*, *supra*, 22 Cal.App.5th at p. 1058.) It is of no consequence that Helmer regained possession of the gun. (*Id.* at pp. 1058, 1059 [though “minor’s exercise of control and dominion over the phone was short, it was clearly sufficient” to establish a taking]; *People v. Pham* (1993) 15 Cal.App.4th 61, 67 [“defendant forcibly asported or carried away the victims’ property when he physically resisted their attempts to regain it”].)

Next, Mickles suggests there was no evidence of force or fear, because Helmer “instigated the use of force” by drawing his firearm. We disagree with this characterization of the evidence. Helmer testified Mickles demanded Helmer give him his belongings, prompting Helmer to feel afraid, and to draw his firearm. Helmer ordered Mickles to back up, but Mickles did not comply. Instead, Mickles approached Helmer. Helmer holstered his gun, and Mickles “engaged [Helmer]” and the men wrestled. The evidence suggests Mickles—not Helmer—instigated the use of force. But Mickles’s argument fails even if we accept his claim that Helmer initiated the contact. “We reject any effort . . . to shift the blame to the victim. It is the conduct of the perpetrator who resorts to violence to further his theft, and not the decision of the victim to confront the perpetrator, that should be analyzed in considering whether a robbery has occurred.” (*People v. Gomez* (2008) 43 Cal.4th 249, 264.)

As recited above, there is substantial evidence of a taking by force. Mickles’s act of pulling the gun from Helmer’s holster satisfies the quantum of force necessary for robbery. (*People v. Burns* (2009) 172 Cal.App.4th 1251, 1257–1259 [“where a person wrests away personal property from another person, who resists the effort to do so, the crime is robbery”]; *People v. Garcia* (1996) 45 Cal.App.4th 1242, 1246 [defendant pushed cashier out of the way to get access to cash register], overruled in part on other grounds in *People v. Mosby* (2004) 33 Cal.4th 353.) Having reached this conclusion, we need not address Mickles’s contention regarding the sufficiency of the evidence of the fear element.

We are not persuaded by Mickles’s argument that there is no evidence he

intended to permanently deprive Helmer of the gun. Robbery “requires a . . . specific intent to permanently deprive the victim of the property.” (*People v. Torres* (1995) 33 Cal.App.4th 37, 50.) This requirement “ ‘is satisfied by the intent to deprive temporarily but for an unreasonable time so as to deprive the person of a major portion of its value or enjoyment.’ ” (*People v. Aguilera* (2016) 244 Cal.App.4th 489, 500.) “Evidence of intent to commit a theft ‘is rarely demonstrated by direct proof, and as a result, may be inferred from facts and circumstances.’ ” (*People v. Hussain* (2014) 231 Cal.App.4th 261, 273.) Mickles approached Helmer in a dark hallway, demanded Helmer give him his belongings, wrestled with Helmer, and forcefully took Helmer’s gun during the struggle. Mickles refused Helmer’s demands to let go of the gun, and physically attacked Helmer after he regained possession.

From this evidence, the jury could conclude Mickles intended to deprive Helmer of the gun permanently or for such an extended a period of time as to deprive Helmer of a major portion of its value or enjoyment. (*People v. Clark, supra*, 52 Cal.4th at p. 944 [sufficient evidence of intent to steal]; *People v. Aguilera, supra*, 244 Cal.App.4th at pp. 501–502 [intent to deprive established where defendant took victim’s cell phone during physical altercation].) Moreover, Mickles certainly does not suggest that he intended to return the gun to Helmer, thereby linking himself to the crimes. When he took the gun, Mickles created an unreasonable risk that Helmer would have never gotten it back. (See *People v. Wolfe* (1967) 257 Cal.App.2d 420, 426 [affirming conviction where defendant purportedly borrowed a gun to commit a different crime].)

Mickles’s final contention is the conviction was influenced by “prejudicial and inflammatory testimony” by various prosecution witnesses, including Helmer. We reject this argument because it is not briefed “properly under a separate heading” or supported by “legal analysis” or citations to authority. (*300 DeHaro Street Investors v. Department of Housing & Community Development* (2008) 161 Cal.App.4th 1240, 1257.) The argument in Mickles’s reply brief is under a separate heading, but it is devoid of “ ‘legal argument with citation of authorities on the points made.’ ” (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) We decline to consider an argument that “is not stated under a

separate heading, is not sufficiently developed, and is unsupported by citation of authority.” (*T.P. v. T.W.* (2011) 191 Cal.App.4th 1428, 1440, fn. 12.)

DISPOSITION

The judgment is affirmed.

Jones, P.J.

WE CONCUR:

Simons, J.

Burns, J.

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